

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALAN MILLS,

Plaintiff,

v.

NOAH ZEICHNER,

Defendant.

CASE NO. C23-1130JLR

ORDER

Before the court are *pro se* Plaintiff Alan Mills's motions (1) to retax costs, and (2) to stay these proceedings pending appeal. (Mot. to Retax (Dkt. # 80); Mot. to Stay (Dkt. # 81); Stay Reply (Dkt. # 84).) Defendant Noah Zeichner opposes the motions. (Retax Resp. (Dkt. # 82); Stay Resp. (Dkt # 83).) The court has considered the motions, the parties' submissions in support of and in opposition to the motions, the relevant

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1 portions of the record, and the governing law. Being fully advised,<sup>1</sup> the court DENIES  
 2 Mr. Mills's motion to retax and GRANTS in part and DENIES in part his motion to stay.

3 The court first addresses the motion to retax costs. The Clerk previously granted  
 4 Mr. Zeichner's motion for a bill of costs and taxed \$515.89 against Mr. Mills. (2/23/24  
 5 Order (Dkt. # 79).) Mr. Mills now appeals that ruling pursuant to Local Civil Rule  
 6 54(d)(4). *See* Local Rules W.D. Wash. LCR 54(d)(4) (providing that the Clerk's taxation  
 7 of costs shall be final unless appealed to the presiding district judge "by filing a motion to  
 8 retax"). Under Federal Rule of Civil Procedure 54(d)(1), "costs—other than attorney's  
 9 fees—should be allowed to the prevailing party." Fed. R. Civ. P. 54(d)(1). Here, Mr.  
 10 Mills raises a single argument in support of his motion: that Mr. Zeichner "is not yet the  
 11 prevailing party" because Mr. Mills has filed a notice of appeal. (Mot. to Retax at 3.)  
 12 Mr. Mills is incorrect. "[A] 'prevailing party' is one who has been awarded some relief  
 13 by the court." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human*  
 14 *Res.*, 532 U.S. 598, 603 (2001). Mr. Zeichner prevailed on his motion for judgment on  
 15 the pleadings and secured dismissal of every one of Mr. Mills's claims. (*See* 1/17/24  
 16 Order (Dkt. # 67); Judgment (Dkt. # 68).) Thus, Mr. Zeichner plainly is the prevailing  
 17 party for the purposes of Rule 54(d). Mr. Mills's filing of a notice of appeal does not  
 18 change that outcome. *See Cal. Union Ins. Co. v. Am. Diversified Sav. Bank*, 948 F.2d  
 19 556, 567 (9th Cir. 1991) (affirming denial of motion to retax, where the district court

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21 <sup>1</sup> Neither party requests oral argument (*see* Mot. to Retax at 1; Mot. to Stay at 1; 1st  
 22 Resp. at 1; 2d Resp. at 1), and the court determines that oral argument would not be helpful to its  
 disposition of the motions. *See* Local Rules W.D. Wash. LCR 7(b)(4).

1 clerk taxed costs after a notice of appeal had been filed). The court therefore DENIES  
2 Mr. Mills's motion to retax costs.

3 The court next addresses Mr. Mills's motion to stay. Mr. Mills asks the court "to  
4 stay all further proceedings related to this Case, including discovery and taxation of costs,  
5 pending the outcome of [Mr. Mills]'s appeal." (Mot. to Stay at 5.) As Mr. Zeichner  
6 correctly points out, however, "[n]ot only is discovery closed, but also, no further  
7 proceedings would otherwise take place before the district court because Mr. Mills's  
8 notice of appeal conferred jurisdiction to the appellate court," thus "divesting the district  
9 court of jurisdiction to 'alter or expand upon the judgment.'" (2d Resp. at 3 (quoting *In*  
10 *re Padilla*, 222 F.3d 1184, 1190 (9th Cir. 2000)).) For these reasons, Mr. Mills's motion  
11 to stay is misguided to the extent he seeks a stay of district court proceedings unrelated to  
12 the bill of costs.

13 That said, this court retains jurisdiction to address matters ancillary to the appeal,  
14 such as a bill of costs. *See K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 968 (9th Cir.  
15 2014). To the extent Mr. Mills seeks a stay of execution of the bill of costs, that issue is  
16 governed by Federal Rule of Civil Procedure 62, which provides that "[a]t any time after  
17 judgment is entered, a party may obtain a stay by providing a bond or other security," and  
18 "[t]he stay takes effect when the court approves the bond." Fed. R. Civ. P. 62(b)<sup>2</sup>; *see*  
19 *also NLRB v. Westphal*, 859 F.2d 818, 819 (9th Cir. 1988) ("The posting of a bond  
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21 <sup>2</sup> Rule 62 was amended in 2018. Rule 62(b) "carries forward in modified form the  
22 supersedeas bond provisions of former Rule 62(d)," now providing "the opportunity to post  
security in a form other than a bond." Fed. R. Civ. P. 62 advisory committee's note to 2018  
amendments.

1 protects the prevailing [party] from the risk of a later uncollectible judgment and  
2 compensates him for delay in the entry of final judgment.”). District courts have inherent  
3 discretionary authority in setting supersedeas bonds. *Rachel v. Banana Republic, Inc.*,  
4 831 F.2d 1503, 1505 n.1 (9th Cir. 1987); *see also Glob. Indus. Inv. Ltd. v. 1955 Cap.*  
5 *Fund I GP LLC*, No. 21-cv-08924-HSG, 2023 WL 6310263, at \*12 (N.D. Cal. Sept. 27,  
6 2023) (“Although practices vary among judges, a bond of 1.25 to 1.5 times the judgment  
7 is typically required.” (quoting *Cotton ex rel. McClure v. City of Eureka*, 860 F. Supp. 2d  
8 999, 1029 (N.D. Cal. Mar. 16, 2012))). District courts also have discretion to waive or  
9 modify the bond requirement. *See, e.g., United States v. Birdsong*, No. CV  
10 17-72-M-DWM, 2019 WL 1026277, at \*1 (D. Mont. Mar. 4, 2019) (citing *Int’l*  
11 *Telemeter Corp. v. Hamlin Int’l Corp.*, 754 F.2d 1492, 1495 (9th Cir. 1985)).

12 Mr. Mills makes no mention of a supersedeas bond in his motion (*see generally*  
13 *Mot. to Stay*), but he states in his reply that he “would be happy to post a supersedeas  
14 bond if the Court should require” it (*Stay Reply* at 3). The court construes this statement  
15 as a request that the court waive Rule 62(b)’s bond requirement. The party seeking  
16 waiver of the bond requirement bears the burden to show that waiver is justified.

17 *Waine-Golston v. Time Warner Ent.-Advance/New House P’ship*, No.  
18 11cv1057-GPB(RBB), 2023 WL 1899928, at \*1 (S.D. Cal. May, 7, 2013). Waiver “is  
19 reserved for unusual circumstances.” *Hardesty v. Sacramento Metro. Air Quality Mgmt.*  
20 *Dist.*, 2019 WL 2715616, at \*3 (E.D. Cal. Jun 28, 2019) (internal quotation marks  
21 omitted). Although the Ninth Circuit has not established a test for evaluating waiver in

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1 the context of Rule 62(b), courts in this circuit generally consider five factors known as  
 2 the *Dillon* factors:

3 (1) the complexity of the collection process; (2) the amount of time required  
 4 to obtain a judgment after it is affirmed on appeal; (3) the degree of  
 5 confidence that the district court has in the availability of funds to pay the  
 6 judgment; (4) whether the [movant's] ability to pay the judgment is so plain  
 7 that the cost of a bond would be a waste of money; and (5) whether the  
 [movant] is in such a precarious financial situation that the requirement to  
 post a bond would place other creditors of the defendant in an insecure  
 position.

8 *Id.* at \*4 (citing *Dillon v. City of Chicago*, 866 F.2d 902, 904 (7th Cir. 1988)); *see also*,  
 9 *e.g.*, *Glob. Indus. Inv. Ltd.*, 2023 WL 6310263, at \*10 (applying *Dillon* factors); *Est. of*  
 10 *Brown v. Lambert*, No. 155-cv-1583-DMS (WVG), 2020 WL 4925586, at \*1 (S.D. Cal.  
 11 Apr. 3, 2020) (same); *Birdsong*, 2019 WL 1026277 at \*2 (same); *De La Fuente*  
 12 *Manriquez v. City of Pheonix*, No. CV-11-1981-PHX-SMM, 2014 WL 12675250, at \*1  
 (D. Ariz. July 24, 2014) (same).


13 Mr. Mills fails to carry his burden to establish that waiver is justified. He neither  
 14 identifies unusual circumstances that warrant a departure from typical Rule 62 procedures  
 15 (*see generally* Mot. to Stay), nor does he assess the *Dillon* factors. (*See generally* Mot. to  
 16 Stay.) Moreover, Mr. Mills provides no information about his financial circumstances  
 17 aside from his status as “a retired individual.” (*Id.* at 4.) Being retired does not, on its  
 18 own, establish an inability to pay. Furthermore, the court notes that Mr. Mills is not  
 19 proceeding *in forma pauperis*. (*See generally* Dkt.)

20 For the foregoing reasons, the court declines to waive the supersedeas bond  
 21 requirement. The court GRANTS in part Mr. Mills’s motion to the extent he seeks a stay  
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1 of execution of the bill of costs, conditioned upon Mr. Mills's posting of a supersedeas  
2 bond in the amount of \$700.00 by no later than April 5, 2024.

3 In sum, the court DENIES Mr. Mills's motion to retax costs (Dkt. # 80) and  
4 GRANTS in part and DENIES in part Mr. Mills's motion to stay (Dkt. # 81).

5 Dated this 25th day of March, 2024.

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7 JAMES L. ROBART  
8 United States District Judge  
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